FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.623 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Sunil Singh for the petitioner.

Mr.S.R.Shinde APP for the State.

Coram : R.S.Mohite,J

Date : 23.3.2006.

PC

1. Heard both sides. Rule. By consent, rule made returnable forthwith.

2. This petition impugns an order dated 22.2.2006 passed by the Addl.Sessions Judge, Greater Bombay, framing an additional charge under Section 496 of IPC against the accused persons. It appears from the record that the case against the present petitioner was initially filed on the complaint of one Manisha Pandey who is now calls herself as Manisha Tiwari for offences

punishable under Sections 363, 226, 506 part-II, 420 and 114 of IPC. When the case came for trial the Complainant Manisha Tiwari entered the witness box and deposed that she had married the present petitioner on 26.4.2001. In answers to questions asked by the Court, she replied that she knew about the first marriage of accused no.1 even prior to her marriage. That she had seen the consent letter of his first wife and that the petitioner was not staying with his first wife as he had separated.

3. Based upon such evidence prosecution made an application for amendment of the charge and for addition of section 495 & 193 read with 34 of IPC to the charges that were originally framed. This was objected to by the accused and ultimately trial Court passed an impugned order wherein the Court held that though a charge under section

495 & 193 could not be framed, an offence under section 496 was made out against the accused. While holding so the Court while analysing the definition of "dis-honesty" concluded that wrongful loss can be said to have been caused to the first wife and the wrongful gain can be said to have been accrued to the complainant and accused no.1.

4. The trial Court has lost sight of the fact that offence under Section 496 of IPC falls within the chapter-XXIII of the IPC. There is a bar under Section 198 of Cr.P.C. for taking cognizance of such an offence except upon a complaint made by aggrieved person. The first wife has chosen only to file a case under Section 494. In any case the complainant in this case cannot be said to be aggrieved party because even according to the trial Court she is a person gaining alongwith

the accused. In the circumstances, impugned order will have to be set aside. Rule is made absolute in terms of prayer clause-(a). It is made clear that the trial under the original charges shall proceed. Petition stands disposed of.

(R.S.Mohite,J)